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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of the Commission's Regulatory
Policies to Allow Non-U.S.-Licensed Space
Stations to Provide Domestic and International
Satellite Service in the United States

and

Amendment of Section 25.131 of the
Commission's Rules and Regulations to
Eliminate the Licensing Requirement for Certain
International Receive-Only Earth Stations

and

COMMUNICATIONS SATELLITE
CORPORATION

Request for Waiver of Section 25.131(j)(1) of
the Commission's Rules As It Applies to
Services Provided via the Intelsat K Satellite

IB Docket No. 96-111

CC Docket No. 93-23
RM-7931

DOCKET FILE COPY ORIGINAL

File No. ISP-92-007

ERRATUM

The Comments of ICO Global Communications filed July 15, 1996 in the above
referenced proceeding are corrected as follows:

1. In the Summary, the second sentence of the first full paragraph on page v is
changed to: "Under the test, a non-U.S.-licensed MSS operator would be precluded from serving
the United States if it could not prove that U.S.-licensed MSS operators have competitive
opportunities in every critical mass country."


2. Also in the Summary, the phrase "critical mass country does not offer" in the fourth line from the bottom of page vi is changed to "critical mass country offers."

3. In the main document, pages 26 and 27 are placed in the correct order.

For the Commission's convenience, we are submitting an original and six copies of the revised Summary, corrected as set forth above

Please do not hesitate to contact the undersigned should you have any questions.

Respectfully submitted,

By 

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July 16, 1996

SUMMARY

Global mobile satellite services ("MSS") are an innovative, advanced form of communications services that will allow users to communicate from anywhere to anywhere in the world. MSS will expand telecommunications coverage to areas now unreachable or underserved by conventional fixed or mobile systems, thus creating the truly global telecommunications infrastructure that the current Administration champions.

ICO was formed specifically to provide MSS on a global basis. Since its inception, ICO consistently has advocated the position that open, competitive, and non-discriminatory market access for all MSS operators will best serve the public interest by producing high quality satellite services at the lowest possible costs. In keeping with this philosophy, ICO has supported the efforts of the United States and other countries of the World Trade Organization ("WTO") to reach an agreement on the liberalization of international telecommunications markets.

ICO supports the Commission's tentative conclusion that non-U.S.-licensed space stations need not obtain licenses from the United States. The Commission's proposal to regulate non-U.S.-licensed MSS systems through the licensing of earth stations that communicate with those satellites will provide the Commission with sufficient oversight of MSS systems.

ICO is strongly opposed, however, to the Commission's proposal to apply an ECO-Sat test to MSS, either on a route-by-route or on a "critical mass" basis. The proposed test directly contradicts the United States' pro-competitive, pro-open market access position in the WTO-sponsored multilateral negotiations concerning

telecommunications and is counter to the FCC's contention that all MSS systems are inherently global, rather than national flag carriers. The proposed critical mass test also violates the standstill provision agreed to by the participants of these multilateral negotiations, and its adoption could seriously hinder the participants' continuing efforts to reach agreement on market access.

The proposed critical mass test is not pro-competitive because it would result in less, rather than more, competition in the provision of MSS. Under the test, a non-U.S.-licensed MSS operator would be precluded from serving the United States if it could not prove that U.S.-licensed MSS operators have competitive opportunities in *every* critical mass country. In many instances, for reasons beyond their control, it will be difficult, if not impossible, for non-U.S.-licensed MSS operators to make the requisite showing regarding open access. Most, therefore, will fail the test and be precluded from serving the United States. At a minimum, the critical mass test will subject non-U.S.-licensed MSS systems to unnecessary delay in implementing services. The practical effect of the test, then, will be to insulate U.S.-licensed MSS operators from the very competition that the Commission espouses.

Nor will the critical mass test serve to encourage other countries to open their markets, as the Commission intends. The trend in many countries already is toward competition, especially with respect to mobile services. Because MSS is essentially a cellular extension, there is every reason to believe that these countries will similarly desire a competitive MSS market.

The proposed critical mass test is flawed in a number of other ways. First, it arbitrarily distinguishes between U.S.-licensed MSS operators and non-U.S.-licensed operators and encumbers the latter with a regulatory obstacle not faced by the former. This discriminatory treatment of non-U.S.-licensed MSS operators is entirely unwarranted given that all MSS systems are similar in terms of their international characteristics. This similarity is not surprising given the inherently international nature of MSS systems. All MSS operators, regardless of their home country, must secure international partners and service providers that will assist in securing authorizations in the foreign countries the MSS operator intends to serve.

A look at the MSS operators in existence today evidences this point. Globalstar and Iridium, and to a lesser degree Odyssey, all like ICO, have numerous foreign investors and service providers with whom they have affiliated. For the Commission to apply its critical mass test in effect, to one company - ICO - but not to the others solely because ICO's space station is not licensed by the United States is illogical. ICO is no more "foreign" than Globalstar, Iridium and Odyssey. Likewise, Globalstar, Iridium and Odyssey are no more "domestic" than ICO.

Second, the "all or nothing" aspect of the test constitutes regulatory overkill. Under the test, an MSS operator would be precluded from providing service between the U.S. and all countries if it fails to prove that a critical mass country offers U.S.-licensed systems competitive opportunities. As a result, there will be less competition on routes that are open to U.S. satellites, because of the fact that other markets are closed. In other words, some countries will be punished because of the "sins" of others. Ultimately, the

greatest harm to the public interest will result when consumers are denied the right to choose among the full range of MSS providers that would be available in a fully competitive global market.

Third, it is not clear how the Commission would determine which countries are relevant to a critical mass test and which are not. A critical mass test, regardless of how it is defined, would be an entirely arbitrary selection of countries.

Fourth, obtaining the requisite proof that other countries afford U.S.-licensed satellite operators open access could be difficult, if not impossible. To date, many countries have yet to adopt regulatory schemes for MSS, despite giving strong indications of welcoming global MSS systems and encouraging local partnership arrangements. With respect to these countries, non-U.S.-licensed MSS operators may, nevertheless, have difficulty proving open access.

Finally, application of the proposed ECO-Sat test would cause the Commission impermissibly to infringe on the jurisdiction of the Executive Branch over trade policy. In at least two proceedings in the past, the Commission has concluded that it lacks the authority to adopt reciprocity standards similar to the ECO-Sat test. Regardless of how the Commission may characterize it, the ECO-Sat test is a reciprocity test. Accordingly, if it were to apply the test, the Commission would be usurping the authority of the Executive Branch over trade policy matters.

The Commission can better promote the public interest by abandoning its proposed ECO-Sat test for MSS. ICO urges that the Commission instead place all global MSS operators on equal competitive footing by encouraging other countries to impose on their

MSS operators a “no special concessions” condition similar to that imposed by the FCC on U.S.-licensed MSS operators. The current language contained in the condition should be expanded to prohibit the licensee from acquiring or enjoying special arrangements that unfairly disadvantage *any* competing satellite operator, whether licensed by the United States or another country

If implemented multilaterally, this approach would establish regulatory parity for all MSS operators by ensuring that no MSS operator enjoys special concessions over any other operator in any country. Such an approach would be consistent with the United States’ position with respect to market access and would best serve the Commission’s stated goal of “enhancing competition in the global market for satellite services.”

CERTIFICATE OF SERVICE

I, Kimberly E. Thomas, do hereby certify that the foregoing **ERRATUM** was hand delivered on this 16th day of July, to the following:

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